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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,540	08/03/2001	Jane S. MacCutcheon	1264-001	6837
27820	7590	11/26/2003	EXAMINER	
WITHROW & TERRANOVA, P.L.L.C. P.O. BOX 1287 CARY, NC 27512			LOCKETT, KIMBERLY R	
			ART UNIT	PAPER NUMBER
			2837	

DATE MAILED: 11/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/921,540

Applicant(s)

MACCUTCHEON, JANE S.

Examiner

Kim R. Lockett

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 122-176 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 159-164 is/are allowed.
- 6) ☒ Claim(s) 122-158 and 165-176 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 121-134, 138-140, 143, 129-132, 143, 145-155, and 165-176 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hale in view of Choong and Hoffman.

Hale discloses the use of a system for facilitating learning and playing of music comprising associating a color with a musical note, the color having a name, the color corresponding with the note name and presenting the musical note in the associated color (column 10, lines 35-45). Hale further discloses that the use of animal indicia with the musical note is well known in the art (column 1, lines 42-56). Hale also discloses that the use of staves and scores is well known in the art (column 1, lines 37-41 & 61-65).

Hale does not specifically disclose the use of a pitch marking system or alliteration.

Choong discloses the use of a music-teaching device with a musical scale that provides pitch markings proximate a side of a musical note and a note selection system.

Hale and Choong do not specifically disclose the use of sharp and flat notes or alliteration.

Hoffman discloses that the use of a system for teaching music by defining a key for musical instruments comprising the association of flat and sharp notes presenting the notes on the musical instrument with colors on a musical instrument (see column 2, lines 7-16) is well known in the art. Hoffman further discloses the use of wind instruments and the use specific notes associated with a corresponding key. Hoffman also discloses that the use of various notes (column 3, lines 1-5). Hoffman also discloses a note formation technique for forming the musical note on a musical instrument with a plurality of formation identifiers (see figure 2).

Hale, Hoffman, and Choong (the prior art) do not disclose the use of alliteration, the specific colors, and dashes as disclosed by the applicant. However, it would have been obvious to one ordinary skill in the art at the invention as made to modify the alliteration technique, colors, and dashes as taught by the applicant since the prior art does disclose the use of colored music association, colored indicia, and pitch identifiers and since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

3. Claims 141, 142, and 156-158 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hale in view of Choong, Hoffman, and Graham.

Hale, Choong, and Hoffman do not disclose the specific use of a grid. Graham discloses the use of a colorful grid for musical instruments. Graham discloses the use of a system for teaching music, presenting a grid in a colored fashion with a musical score (see figure 3) and presenting note formation on the instrument (see figure 4) with a series of note actuators corresponding to the instrument where the color matches the actuator (see figure 3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device as disclosed by Hale, the pitch markings as disclosed by Choong, the identifiers as disclosed by Hoffman, and the grid as disclosed by Graham in order to provide an improved musical training device.

4. Claims 135-137 and 144 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hale in view of Choong, Hoffman, and Bennett

Hale, Choong, and Hoffman does not disclose the specific use of stickers.

Bennett discloses a method of teaching music using stickers and painting portions on a musical instrument (column 10, lines 43-50).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device as disclosed by Hale, the pitch markings as disclosed by Choong, the identifiers as disclosed by Hoffman, and the stickers as disclosed by Bennett in order to provide an improved musical training device in which the identifiers can be interchanged.

5. Claims 159-164 are allowed.
6. Applicant's arguments with respect to claims 122-158 and 165-176 have been considered but are moot in view of the new ground(s) of rejection.
7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

8. Any inquiry of a **general nature or relating to the status of this application or filed papers** should be directed to the **Group receptionist** whose telephone number is **(703) 308-0956**.

Papers related to this application may be submitted to Group 2800 by facsimile transmission. Papers should be faxed to Group 2800 via the PTO 2800 Fax Center located at Crystal Plaza 4. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 O.G. 30 (November 15, 1989). The Group 2800

CP 4 Fax Center number is (703) 308-77(22 or 24). Fax numbers that provide an auto-reply fax receipt are: for before finals (703) 872-9318 and after finals (703) 872-9319.


For assistance in **Patent procedure, fees or general Patent questions** calls should be directed to the **Patents Assistance Center (PAC)** whose telephone number is **800-786-9199**. Assistance is also available on the Internet at [www.uspto.gov](http://www.uspto.gov).

For requesting copies of Cited Art, Office Actions or the like, or General Problem solving, calls should be directed to the TC 2800 Customer Service Office whose telephone number is 703-306-3329 or by fax at 703-306-5515.

Any inquiry concerning **this communication or earlier communications from the examiner** should be directed to **Kim Lockett** whose telephone number is **(703) 308-7615**. The examiner can normally be reached on Monday through Thursday from 7:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Nappi, can be reached on (703) 308-3370.

**Kim Lockett**  
**Patent Examiner**  
**Art Unit 2837**

  
**KIMBERLY LOCKETT**  
**PRIMARY EXAMINER**